

REMARKS

As agreed during the interview, claims 1, 8 and 23 have been amended. Claim 1 has been amended to include the limitation of claim 10 and claim 10 has been cancelled. Claim 8 has been amended to clarify that the non-succinated starch is in a batter adhered to the succinated starch coating. Amended claim 8 has the same scope as prior to amendment, which is for clarity purposes only. Claim 23 has been amended to properly depend from claim 1.

Claims 1-8 and 10-23 have been rejected under 35 U.S.C. § 112 for lack of written description in that claim 1 recites “a coating consisting essentially of”. The Examiner states that page 6 discloses other starches in addition to starch succinate may be added to change the organoleptic properties of the coating, such as inclusion of a flour and that page 7 also discloses other components. Applicants respectfully traverse. Page 6 states “other starches in addition to the starch succinate *may* be added...” This does not mean that these other starches must be included in the coating, simply that their inclusion is an option. As an optional ingredient, and particularly in view of the descriptive basis already brought to the Examiner’s attention as well as the Examples in which starch succinate solutions were coated directly onto the food portions and any significant additional ingredients were in a second coating (batter) over the succinate film, the language “consisting essentially of” is a validly supported transition phrase.

Claims 8 and 23 have been rejected under 35 U.S.C. § 112 for indefiniteness. The Examiner states that claim 8 is vague and indefinite as it is not clear how it further limits claim 1. Claim 1 states, in part, “a coating consisting essentially of at least one starch succinate adhered directly on the food portion to form a coated food portion” and claim 8 states, in part, “further comprising at least one non-succinated starch adhered on the starch succinate.” Thus, claim 8 further limits claim 1 to a fried composition in which there is at least one non-succinated starch adhered on the starch succinate which is adhered directly on the food portion. In other words, there are at least two starches adhered to the food portion, with the starch succinate adhered directly on the food portion and the non-succinate starch adhered on top of (over) the starch succinate. This second coating is conventionally referred to as a

batter (see the specification at pages 6-7) and claim 8 has been amended to clarify this point as agreed upon with the Examiner during the interview.

The Examiner states that claim 23 is vague and indefinite as it does not recite from which claim it depends. Claim 23 has been amended to properly depend from claim 1.

Claims 1-8 and 10-23 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Judkins et al. (US 6,033,697) in view of Carver et al. (US 2003/0039741). Applicants respectfully traverse this rejection.

Judkins discloses coated frozen par-fried potato strips. Judkins coating may include a starch-based batter. However, as admitted by the Examiner, Judkins does not disclose that the starch is succinated nor the additional characteristics of the succinated starch.

The Examiner then uses Carver to remedy the Judkins deficiency. Carver discloses a starch/flour composition which has been co-processed to provide a number of advantages over the simple mix. The starch may be chosen from a wide variety of starches, including succinated starches. However, Carver states that the starch must be combined with flour. In contrast, the succinated coating of the present invention does not include any other materials which are significant. The skilled artisan would not substitute just the succinated starch of Carver for the starch of Judkins as Carver states that it is essential to use a combination of starch and flour.

Applicants respectfully request entry into the record of the enclosed Dar declaration. Under Dr. Dar's supervision and guidance, French fries were prepared using two starches of the present invention, a succinated waxy corn with a water fluidity of 50 and a succinated potato flour with a water fluidity of 85. French fries were also prepared using a combination of such starches with wheat flour at a variety of ratios. The fat content of these French fries were compared with a control (no coating) and each other.

As can be seen from the figures, particularly Figure 1, the succinate potato starch was damaged, causing results which were neither representative of the invention

nor accurate. Thus, only the results of the samples made using succinated waxy corn starch, alone or in combination with wheat flour, will be further discussed.

As can be seen from the succinated waxy corn results, the control had the highest fat content as was expected. The French fries coated with just waxy corn succinate had the lowest fat content, 23.5% lower than the control. Adding flour to the waxy corn succinate raised the fat content over the waxy corn succinate alone. In fact, the fat reduction of the starch alone was from 3.1-6.6% greater than the fat reduction with added wheat flour.

Thus, as concluded by Dr. Dar, "it is clear that the starch succinate coating reduces oil pickup and consequently reduces the fat content of fried foods. The addition of flour interferes with this functionality of the starch succinate coating such that the addition of flour increases the fat content of the fried foods."

In light of the above statements, it is clear that the present invention is patentable over the combination of Judkins and Carver.

Claims 1-8 and 10-20 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Keijibets (US 6,635,294) in view of Carver et al. (6,777,015). Applicants respectfully traverse.

Keijibets discloses deep-fried products which contain a flour coating. Flour is an essential component of the coating, although it may also contain starch. In the invention as claimed, the coating adhered to the food portion does not contain any significant materials other than starch (e.g., flour).

Further, as evidenced by the Dar declaration and detailed above, addition of flour increases the fat reduction functionality of the coating and thus the rejection has been overcome.

Claims 1, 2 and 7 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Shi, et al. (US 2003/0099744). Applicants respectfully traverse. As previously argued, Shi discloses glazing food using a converted starch. The starch may be modified using any chemical modification, specifying that particularly useful starches are acetylated, hydroxyalkylated, phosphorylated, succinated and substituted succinate derivatives. However, modification is only an

optional step and succinated starch esters just one of the possible modifications with none of the examples showing such succinated starches.

Claim 1 of the present application is directed to a product-by-process claim in that the starch succinate derivative is adhered to the food and is *subsequently* fried or par-fried.” [emphasis added]. The order of the steps results in a different product as if the food portion is fried and then the starch succinate is adhered to the fried food, the product will have a higher fat content than that of the presently claimed composition. Thus, not only does the order of these steps change the product, but the order also distinguishes the present invention from Shi.

Examples 2 and 3 show that French fries which have been coated with the claimed starch differ from those in which no starch has been added prior to frying in that there is a reduced fat level. Although no comparison is made with French fries which have been coated with starch after frying, the skilled artisan would recognize that adding starch after frying would not reduce the fat level as there is no further addition of (exposure to) fat. Thus, Applicants maintain that the rejection in view of Shi has been overcome.

In view of the foregoing, Applicants submit the Application is now in condition for allowance and respectfully requests early notice to that effect. Election by the Applicants not to address each and every statement made by the Examiner does not imply agreement with any unaddressed statement.

Respectfully submitted,

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